

DEPARTMENT OF EDUCATION**34 CFR Part 361**

RIN 1820-AB14

The State Vocational Rehabilitation Services Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing The State Vocational Rehabilitation (VR) Services Program. These amendments are needed to implement changes in the Rehabilitation Act of 1973, as amended (Act). The proposed regulations would establish evaluation standards and performance indicators for The State VR Services Program.

DATES: Comments must be received by the Department on or before November 30, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fredric K. Schroeder, Commissioner, Rehabilitation Services Administration (RSA), U.S. Department of Education, 600 Independence Avenue, SW., Room 3028, Mary E. Switzer Building, Washington, DC 20202-2531. Comments transmitted by facsimile should be sent to (202) 205-9772 or (202) 260-7527. Comments may also be sent through the Internet to: comments@ed.gov.

You must include the term "VR Standards" in the subject line of your electronic message.

Electronic transmission of comments will facilitate the analysis of comments. Also, comments should be specific and identified by proposed regulatory citation. RSA is not required to consider comments received after the due date for comments noted previously.

Comments that concern information collection requirements must be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, Policy, Planning and Evaluation Service, Rehabilitation Services Administration, U.S. Department of Education, 600 Independence Avenue, SW., Room 3014 Mary E. Switzer Building, Washington, DC 20202-2550. Telephone: (202) 205-8831. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1-800-877-8339 (in the Washington, DC area, telephone (202) 708-9300) between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

For fiscal year (FY) 1996 performance data reports on individual DSUs, please contact Harold Kay, Policy, Planning and Evaluation Service, Rehabilitation Services Administration, Room 3014 Mary E. Switzer Building, 600 Independence Avenue, SW., Washington, DC 20202-2550. Telephone: (202) 205-9883. Internet: Harold_Kay@ed.gov.

SUPPLEMENTARY INFORMATION:**Invitation to Comment:**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3214, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205-8113 or (202) 260-9895. An individual who uses a TDD may call the Federal Information Relay Service at 1-800-877-8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

General

These proposed regulations would amend the regulations in Part 361 of the Code of Federal Regulations governing The State Vocational Rehabilitation Services Program (VR program) by adding a Subpart E to implement certain requirements of the Rehabilitation Act Amendments of 1992 (1992 Amendments), Pub. L. 102-569, and the Rehabilitation Act Amendments of 1998 (1998 Amendments), as specified in Title IV of the Workforce Investment Act of 1998 (Workforce Act), Pub. L. 105-220, August 7, 1998. The 1992 Amendments added section 106 to Part A of Title I of the Rehabilitation Act of 1973, as amended, which authorizes the VR program. Title IV of the Workforce Act, which contains the 1998 Amendments, modifies section 106 of the Act to require that, to the maximum extent practicable, the VR standards and indicators be consistent with the core indicators of performance (Core Indicators) established under section 136(b) of the Workforce Act. Section 106 also requires, among other things, the following: (1) The Secretary establishes and publishes in the **Federal Register** evaluation standards and performance indicators for the VR program. (2) The evaluation standards and performance indicators must include outcome and related measures of program performance that facilitate and in no way impede the accomplishment of the purpose and policy of the program. (3) The evaluation standards and performance indicators must be developed with input from designated State units (DSUs) for VR, related professional and consumer organizations, recipients of VR services, and other interested parties. (4) Each DSU shall report to the Secretary after the end of each fiscal year the extent to which it is in compliance with the evaluation standards and performance indicators. (5) The Secretary provides technical assistance to any DSU that performs below the established evaluation standards and develops jointly with a DSU a program improvement plan outlining specific actions to be taken by a DSU to improve program performance. (6) If a DSU that performs below the established evaluation standards fails to enter into a program improvement plan, or is not complying substantially with the terms and conditions of such a program improvement plan, the Secretary reduces or makes no further payments to the DSU until the DSU has entered into an approved program improvement plan or is complying substantially with the terms and conditions of such a

program improvement plan. (7) RSA provides a report to Congress containing an analysis of program performance, including relative State performance, based on the evaluation standards and performance indicators.

These proposed regulations would implement those requirements in section 106.

Executive Order 12866 encourages Federal agencies to facilitate meaningful participation in the regulatory development process. Accordingly, the U.S. Department of Education (Department) has widely consulted with the rehabilitation community during the development of the current proposed evaluation standards and performance indicators. On February 19, 1993, the Department published a notice of intent to regulate in the **Federal Register** (58 FR 9458) to solicit comment on the development of the proposed evaluation standards and performance indicators. The Department also held a public meeting on September 23, 1993, to discuss several issues relating to the development of proposed evaluation standards and performance indicators. Since that time, the Commissioner of RSA has discussed the development of the proposed indicators on many occasions with various members of the rehabilitation community. These proposed regulations contain proposed evaluation standards and performance indicators that reflect the input received through these efforts.

The proposed regulations contain two evaluation standards, each of which has at least two or more implementing performance indicators by which to measure DSU performance. The proposed regulations also contain specific performance levels for each indicator that identify the minimum level of performance that a DSU would need to achieve in order to pass a given indicator. Under these proposed regulations, a DSU would have to pass a minimum of five of the seven performance indicators, including at least two of the three primary indicators, for Evaluation Standard 1, and both performance indicators for Evaluation Standard 2.

The Secretary plans to propose other evaluation standards in addition to the two standards included in these proposed regulations, once appropriate data-gathering instruments and methods for measuring compliance with the additional standards have been developed and tested. The Secretary is considering three additional standards and implementing performance indicators. These "draft proposed standards and indicators" are identified and discussed in a separate section of

this preamble. The Secretary solicits public comment on issues regarding the validity and feasibility of implementing these draft proposed evaluation standards and performance indicators. The Secretary also requests comments on identifying available data-gathering instruments and methods for measuring compliance with the draft proposed performance indicators. Based on the public comments received and on the results of the data gathering, the Secretary intends to revise these draft proposed standards and indicators and publish them for comment in a future notice of proposed rulemaking (NPRM).

Proposed Evaluation Standards 1 and 2

Background

The following is a brief overview of the evaluation standards and performance indicators included in these proposed regulations (Evaluation Standards 1 and 2; Performance Indicators 1.1 through 1.7 and 2.1 through 2.2), including a discussion of the role of the standards and indicators in the oversight of the VR program.

Accountability for the VR program is established primarily through the Government Performance and Results Act (GPRA), the Title I evaluation standards and performance indicators, DSU State Plans, and program monitoring. GPRA requires that U.S. Government programs provide annual plans that include program outcome indicators. RSA has proposed national aggregate outcome indicators to meet GPRA requirements, and the Title I evaluation standards and performance indicators are closely related to the GPRA indicators. The Title I evaluation standards and performance indicators measure performance at the DSU level, while the GPRA indicators measure the aggregate performance of all DSUs.

Each DSU submits a State Plan containing assurances and specific information demonstrating compliance with the requirements of section 101 of the Act. The 1998 Amendments revised section 101(a)(15) of the Act to require DSUs to use the results of a comprehensive statewide assessment of rehabilitation needs and the Title I evaluation standards and performance indicators as bases for developing DSU goals and priorities. In addition, under section 107(a)(1) of the Act, RSA conducts monitoring to "determine whether, in the administration of the State Plan, a State is complying substantially with the provisions of such plan and with evaluation standards and performance indicators established under section 106 [of the Act]." Thus, the Title I evaluation

standards and performance indicators are considered a crucial part of a comprehensive, integrated system of accountability for the VR program.

Proposed Evaluation Standard 1, which measures employment outcomes, includes seven performance indicators. Because the Secretary considers three of these performance indicators particularly representative of the central purposes of the VR program, these three performance indicators would be identified as "primary" indicators.

Primary indicators address the areas the Secretary considers most significant in evaluating a DSU's success in assisting individuals with disabilities, including individuals with significant disabilities, to achieve high-quality employment outcomes. The first of these primary indicators would measure the percentage of all individuals determined to have achieved an employment outcome who exit the VR program into competitive, self-, or "Business Enterprise Program" (BEP) employment with earnings equivalent to at least the minimum wage (Performance Indicator 1.3). The second primary indicator would measure individuals with significant disabilities as a percentage of all individuals who exit the VR program into competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage (Performance Indicator 1.4). The third primary indicator would measure the average hourly earnings of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed (as derived from the Bureau of Labor Statistics report "State Average Annual Pay" for the most recent available year) (Performance Indicator 1.5). The four remaining performance indicators under Evaluation Standard 1 would measure the number of employment outcomes (Performance Indicator 1.1), the percentage of cases with employment outcomes (Performance Indicator 1.2), self-sufficiency resulting from employment (Performance Indicator 1.6), and employment outcomes with medical insurance plans that cover hospitalization (Performance Indicator 1.7). A DSU would have to pass two of the three primary indicators and a total of at least five of the seven performance indicators to meet the performance requirements for Evaluation Standard 1.

These proposed performance indicators are designed to ensure that DSUs assist adequate numbers and proportions of individuals with

disabilities to obtain employment outcomes, gain access to medical insurance plans that cover hospitalization, and become self-sufficient. The proposed performance indicators also emphasize high quality competitive employment outcomes with adequate earnings, particularly for individuals with significant disabilities.

The Secretary recognizes that high performance on some of these proposed performance indicators could result in lower performance on others. The performance indicators have been designed to support those results in appropriate instances. For example, if a DSU decides to focus more of its resources on assisting persons with significant disabilities to achieve high-quality competitive employment outcomes (which would enhance performance on Performance Indicator 1.4), fewer persons with less significant disabilities would be served and the total number of persons achieving employment outcomes (Performance Indicator 1.1) would likely decline. The proposed regulations, therefore, designate Performance Indicator 1.4 (and not Performance Indicator 1.1) as primary in recognition of the difficulty in satisfying both. Designating Performance Indicator 1.4 as primary is also appropriate since it reflects two central purposes of the VR program: addressing the needs of individuals with significant disabilities and facilitating competitive employment outcomes.

A DSU would have to pass both of the performance indicators for proposed Evaluation Standard 2, which measures equality of access to rehabilitation services. The first performance indicator for proposed Evaluation Standard 2 would compare service rates for minorities and non-minorities. The second indicator for proposed Evaluation Standard 2 would compare the percentage of minorities with significant disabilities who exit the VR program after receiving services under an Individualized Plan for Employment (IPE) as a ratio to the percentage of minorities in the State who have reported that a disability prevents them from working.

As required by section 106(a)(1)(C) of the Act, the standards and indicators developed under the VR program must be consistent, to the maximum extent practicable, with the four Core Indicators established under section 136(b) of the Workforce Act. Accordingly, the proposed performance indicators under proposed Evaluation Standard 1 (Employment Outcomes) reflect the first Core Indicator (Core Indicator I—entry into unsubsidized

employment) established under section 136(b)(2)(A)(i)(I) of the Workforce Act. In particular, performance indicators 1.3 (percentage of individuals obtaining competitive employment) and 1.4 (percentage of individuals with significant disabilities obtaining competitive employment) are consistent with Core Indicator I since performance indicators 1.3 and 1.4 represent the proportions of individuals and individuals with significant disabilities who obtain competitive employment. "Competitive employment" is considered equivalent to "unsubsidized employment," the term used in the Workforce Act to refer to instances in which an individual is self-employed or is paid directly by the individual's employer rather than through a separate source or entity that is subsidizing the employment. On the other hand, performance indicators 1.1 and 1.2 measure the extent to which individuals achieve "employment outcomes" generally, which would include both competitive employment outcomes and other outcomes that are not considered unsubsidized employment (e.g., unpaid homemaker or unpaid family worker). Thus, although performance indicators 1.1 and 1.2 are necessary to address the full scope of employment outcomes achieved by participants in the VR program, those indicators are not entirely consistent with Core Indicator I of the Workforce Act. Finally, performance indicators 1.5, 1.6, and 1.7 refer to other key factors associated with a successful VR program—earnings, employment as the main source of support, and employment benefits, respectively—and, therefore, are not necessarily aligned with Core Indicator I.

The core indicators in the Workforce Act do not address equal access to services (Evaluation Standard 2 in the proposed regulations), consumer satisfaction (draft proposed Evaluation Standard 3 in this preamble), or the adequate use of resources (draft proposed Evaluation Standard 5 in this preamble). Thus, although the Secretary believes these measures are (or in the case of the draft proposed standards, could be) important factors to a successful VR program, the performance indicators for each of these standards are not based on the Workforce Act. Draft proposed Evaluation Standard 3 and its attendant performance indicators, however, are related to the customer satisfaction indicator in section 136(b)(2)(B) of the Workforce Act since both measure the satisfaction of service recipients under applicable programs.

The draft proposed performance indicators under draft proposed Evaluation Standard 4 (retention of employment and earnings), which are described in a separate section of this preamble, are consistent with Core Indicators II and III under section 136(b)(2)(A)(i)(II) and (III) of the Workforce Act. Core Indicators II and III measure retention of unsubsidized employment and earnings over a 6-month period, whereas the draft proposed performance indicators would measure retention of competitive employment outcomes (the equivalent of unsubsidized employment), including earnings, over both a 6- and 12-month period in order to address the difficulties experienced by individuals with disabilities in retaining employment over time. The 12-month review under the draft proposed indicator is also based on section 136(d)(2)(D) of the Workforce Act, which requires States to report on participants' retention of employment and earnings received in unsubsidized employment 12 months after entry into employment.

None of the proposed evaluation standards or performance indicators reflect Core Indicator IV under section 136(b)(2)(A)(4) of the Workforce Act (attainment of a recognized credential relating to achievement of educational or occupational skills) since attaining a recognized credential for achieving a skill has not been a stated goal of the VR program. Performance under the VR program is currently based solely on the extent to which individuals achieve and maintain employment. However, for some individuals, attainment of appropriate credentials is a necessary step in achieving their employment goals. Therefore, the Secretary invites comment on the appropriateness of including Core Indicator IV as a key measure of success in meeting the goals of the VR program. If commenters believe that such an indicator would be appropriate, suggestions on how such an indicator might be implemented are invited.

The proposed evaluation standards and performance indicators would be implemented beginning in FY 1999, and DSU data would be due at the end of FY 1999. The data that are necessary to measure compliance with the proposed indicators are currently being collected under existing reporting requirements. Specifically, information contained in the Case Service Report (RSA-911 report), which DSUs submit annually to RSA, will be used to demonstrate performance under proposed Evaluation Standard 1 (Employment outcomes) and

proposed Evaluation Standard 2 (Equal access to services).

Proposed Subpart E also would require that each DSU report selected data to the Secretary after the end of each fiscal year so that the Secretary could determine whether the DSU is in compliance with the proposed evaluation standards and performance indicators. If the performance of any DSU falls below required levels, the Secretary would provide technical assistance to the DSU, and the DSU and the Secretary would jointly develop a program improvement plan outlining the specific actions to be taken by the DSU to improve program performance.

The Secretary would review a DSU's compliance with its program improvement plan on a biannual basis, and, if necessary, the Secretary would request that a DSU make further revisions to the plan to improve performance. If the Secretary establishes new performance levels while a program improvement plan is in effect, the Secretary and the DSU would jointly modify the program improvement plan to meet the new performance levels. Reviews would continue and requests for revisions would be made until the DSU achieved satisfactory performance based on current performance levels over a period of more than one year.

If the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and conditions of such a program improvement plan, the Secretary reduces or makes no further payments to the DSU under this program until the DSU has met one of these two requirements or raised its subsequent performance to meet the current overall minimum satisfactory level on the compliance indicators.

Section-by-Section Analysis

Section 361.80—Purpose

Proposed § 361.80 states that the purpose of this new subpart is to establish evaluation standards and performance indicators for The State VR Services Program.

Section 361.81—Applicable Definitions

Proposed § 361.81 contains definitions of terms that apply to the evaluation standards and performance indicators in this new subpart. In addition to the definitions identified in this proposed section, the definitions in § 361.5, including the definitions of "competitive employment" and "employment outcome," § 361.5(b)(10) and (15), respectively, apply to the

proposed evaluation standards and performance indicators.

The proposed term "average hourly earnings," which is used in proposed Performance Indicator 1.5, § 361.84(c)(1)(v), under Evaluation Standard 1, would be determined by dividing the "weekly earnings at closure" data element by the "hours worked at closure" data element from the RSA-911 report. An eligible individual's average hourly earnings would be calculated for the week prior to the individual's exiting the VR program after achieving a competitive employment outcome.

The term "Business Enterprise Program (BEP)" would be defined as an employment outcome in which an individual with a significant disability operates a vending facility or other small business under the management and supervision of a DSU. This definition would apply only to the individual operating the enterprise under the management and supervision of the DSU and would not apply to wage-earners or other employees who work for the business. This term is used in proposed Performance Indicators 1.3, 1.4, 1.5, and 1.6, § 361.84(c)(1)(iii), (iv), (v), and (vi), respectively, under proposed Evaluation Standard 1 (Employment outcomes), § 361.82(c)(1).

The proposed definition of "exit the VR program" is based on the service record closure categories in the RSA-911 report and would apply whenever an individual's record of services is closed because the individual was determined ineligible for VR services; achieved an employment outcome; received services under an IPE but did not achieve an employment outcome; or was determined eligible but did not receive services under an IPE. This term is used in all performance indicators under proposed Evaluation Standard 1 and in Performance Indicator 2.2, § 361.84(c)(2)(ii), under proposed Evaluation Standard 2 (Equal access to services), § 361.82(c)(2).

The proposed definition of "full-time employment" is an employment outcome in which an eligible individual worked for a minimum of 35 hours in the week before closure. This term is used in proposed Performance Indicator 1.7, § 361.84(c)(1)(vii), under Evaluation Standard 1.

The proposed definition of "general or combined DSU" is a DSU that does not exclusively serve individuals with visual impairments or blindness. This term is used in proposed § 361.86(b)(1) and (2).

The proposed definition of "individuals from a minority background" is derived from RSA-911

reporting categories and is consistent with governmentwide classifications of race and ethnicity. This term is used in both performance indicators, § 361.84(c)(2)(i) and (ii), under proposed Evaluation Standard 2, § 361.82(c)(2).

The proposed definition of "minimum wage" is the Federal or State minimum wage, whichever is higher. Pursuant to § 361.5(b)(10), "competitive employment" is employment in an integrated setting, at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by non-disabled individuals. If a State minimum wage is higher than the Federal, then employment in that State would not be considered competitive if the individual's wage did not equal or exceed the State minimum wage. This term is used in proposed Performance Indicators 1.3, 1.4, 1.5, and 1.6, § 361.84(c)(1)(iii), (iv), (v), and (vi), respectively.

The proposed definition of "non-minority individuals" means those individuals who report their race as White. This term is used in proposed Performance Indicator 2.1, § 361.84(c)(2)(i).

The proposed definition of "performance period" is the period of time for which a DSU's performance is measured. For general and combined DSUs, that period would be one year and performance data would be aggregated over a one-year period commencing in FY 1999. However, the number of individuals in any single year who exit a program administered by a DSU that serves only individuals with visual impairments or blindness is generally too small to serve as a reliable and valid measure of performance. Thus, for DSUs that serve only individuals with visual impairments or blindness, the performance period would be two years. These DSUs would be required to report two consecutive years of performance data; the first report would include FY 1998 and FY 1999 data. At the end of FY 2000, the general and combined DSUs would report FY 2000 data, and the DSUs that serve only individuals with visual impairments or blindness would report aggregated FY 1999 and FY 2000 data.

The proposed definition of "primary indicator" is used to identify those performance indicators that place particular emphasis on the extent to which State VR programs assist individuals, particularly individuals with significant disabilities, to achieve competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher; and the

average hourly earnings of individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher relate to the State's average hourly earnings for all employed individuals. As discussed previously, the significance accorded these indicators is based on the emphasis the Act places on competitive employment and on serving individuals with significant disabilities.

In addition, emphasizing achievement of competitive, self-, and BEP employment at earnings that are comparable to those achieved by individuals without disabilities is intended as a means of addressing the high unemployment and poverty levels experienced by individuals with disabilities. The Secretary believes achieving these goals would foster increased economic independence and integration into the workforce for individuals receiving services under the VR program. The three proposed "primary" indicators are designed to provide an accurate measure of how well a State's VR program addresses these goals. The term "primary indicator" is used in proposed § 361.86(b)(1).

The proposed definition of "RSA-911" is the Case Service Report that DSUs provide to RSA on each individual exiting the VR program. The Case Service Report includes data on employment outcomes, demographic characteristics, and services received by individuals eligible for VR services. This term is used in proposed § 361.88, "Reporting requirements."

The proposed definition of "self-employment" is consistent with the "self-employment" reporting element on the RSA-911 report and is used in proposed Performance Indicators 1.3, 1.4, 1.5, and 1.6.

The proposed definition of "service rate" is the number of eligible individuals who exit a VR program after receiving one or more services under an IPE as a percentage of all individuals exiting the program. This term is used in proposed Performance Indicator 2.1.

The proposed term "State's Average Hourly Earnings" means the average hourly earnings of all persons in the State in which the DSU is located. Average hourly earnings would be derived by dividing the State's average annual pay, as reported in the Bureau of Labor Statistics report, "State Average Annual Pay," by 2,000—the average number of working hours in a year. This term is used in proposed Performance Indicator 1.5, § 361.84(c)(1)(v), under Evaluation Standard 1.

Section 361.82—Evaluation Standards

Proposed § 361.82 contains the evaluation standards for the VR program. These proposed evaluation standards are based upon the requirement in section 106 of the Act that the evaluation standards and performance indicators facilitate the accomplishment of the policy and purpose of the VR program. Proposed § 361.82(b) would require that a DSU achieve successful performance on both Evaluation Standards 1 and 2.

- *Proposed Evaluation Standard 1 (Employment outcomes)* Proposed Evaluation Standard 1, § 361.82(c)(1), would require a DSU to assist eligible individuals with disabilities, including individuals with significant disabilities, to obtain, maintain, or regain high quality employment outcomes. The quality of an employment outcome is based on whether the outcome is consistent with the individual's vocational choices; is in competitive, self-, or BEP employment; maintains or increases the individual's earnings; and provides medical insurance plans covering hospitalization.

In adopting the 1992 Amendments to the Act, Congress emphasized the need for individuals with disabilities, including individuals with significant disabilities, to become gainfully employed through work that they are both capable of, and interested in, performing. Hence, the Act specifies, in a number of instances, that individuals receiving support under the Act should be able to pursue employment that is consistent with their unique abilities (e.g., sections 100(a)(1)(F) and 102(b)(3)(A)) and their informed choice (e.g., sections 100(a)(3)(C), 101(a)(19), and 102(d)). The Act also places particular emphasis on competitive employment (e.g., in the definition of "employment outcome" in section 7(11) and in the annual review of extended employment placements required by section 101(a)(14)). The Secretary believes that these provisions indicate that the success of the VR program is based in large part on the ability of eligible individuals with disabilities to become self-sufficient by working in the competitive labor market. Thus, proposed Evaluation Standard 1 would assess a DSU's success in assisting individuals with disabilities, including individuals with significant disabilities, to achieve employment outcomes with an emphasis on competitive employment outcomes (which includes self-employment and BEP outcomes) in integrated settings.

- *Proposed Evaluation Standard 2 (Equal access to services).* Proposed

Evaluation Standard 2, § 361.82(c)(2), would require a DSU to ensure that individuals from minority backgrounds have equal access to VR services. This standard was developed in recognition of congressional findings of past inequities between the treatment received by minorities and non-minorities under the VR program. In addition, the Secretary believes that measuring DSU performance in serving minority populations is consistent with the obligation of a DSU to demonstrate, pursuant to section 21 of the Act, how it will address the needs of individuals with disabilities from minority backgrounds.

Section 361.84—Performance Indicators

Proposed § 361.84 lists the performance indicators that measure minimum compliance with the evaluation standards. There are nine performance indicators, three of which (proposed performance indicators 1.3, 1.4, and 1.5) are primary indicators.

Employment Outcomes

- *Proposed Performance Indicator 1.1.* Proposed Performance Indicator 1.1, § 361.84(c)(1)(i), would compare the total numbers of individuals obtaining an employment outcome during the current and previous performance periods.

- *Proposed Performance Indicator 1.2.* Proposed Performance Indicator 1.2, § 361.84(c)(1)(ii), would measure the number of persons obtaining an employment outcome as a percentage of all persons exiting the program after receiving VR services. This percentage would indicate the proportion of eligible individuals who obtain an employment outcome.

- *Proposed Performance Indicator 1.3.* Proposed Performance Indicator 1.3, § 361.84(c)(1)(iii), would measure the number of persons obtaining a competitive, self-, or BEP employment outcome as a percentage of all persons obtaining any type of employment outcome. This indicator would demonstrate a DSU's success in assisting individuals to obtain competitive, self-, and BEP outcomes. These types of outcomes generally provide individuals with disabilities far greater earnings, economic independence, and social integration into the community than do other available outcomes, such as extended employment, homemaker, or unpaid family worker. As discussed previously, the Secretary recognizes that achieving a high performance on this indicator may lower a DSU's performance on other indicators (e.g., Performance Indicators 1.1 or 1.2). For that reason,

and because this indicator reflects the Act's emphasis on competitive employment, this indicator would be designated as a primary indicator.

- *Proposed Performance Indicator*

1.4. Proposed Performance Indicator 1.4, § 361.84(c)(1)(iv), would measure the percentage of competitively employed individuals who have significant disabilities. Given the challenges associated with competitive work, it is generally more difficult and expensive for DSUs to assist individuals with significant disabilities, as opposed to individuals with non-significant disabilities, to obtain competitive, self-, or BEP employment. Therefore, Performance Indicator 1.4 also would be designated as a primary indicator to account for DSUs that make trade-offs in other activities to enhance their performance on this indicator.

- *Proposed Performance Indicator*

1.5. Proposed Performance Indicator 1.5, § 361.84(c)(1)(v), would measure the average hourly earnings of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed. This performance indicator, also a primary indicator, would reflect the additional time, money, and effort required to assist individuals with disabilities to obtain earnings that are comparable to the earnings of non-disabled persons in the State.

- *Proposed Performance Indicator*

1.6. Proposed Performance Indicator 1.6, § 361.84(c)(1)(vi), would measure the difference between the percentage of individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage who report their own income as their largest single source of economic support and the percentage of individuals in that employment who reported their own income as their largest single source of support at the time they applied for VR services. This indicator would apply to all persons who obtain competitive, self-, or BEP employment at or above the minimum wage and would measure gains in self-sufficiency. As an example in applying this indicator, if 10 percent of competitively employed individuals relied on their own income at the time of application for VR services and 70 percent relied on their own income at the time of closure, the difference between the percentages would be 60 percent. This indicator would demonstrate a DSU's success in assisting individuals with disabilities to

become more economically independent as a result of their employment.

- *Proposed Performance Indicator*

1.7. Proposed Performance Indicator 1.7, § 361.84(c)(1)(vii), would measure the extent to which DSUs assist individuals with disabilities to obtain full-time competitive employment with medical insurance plans that cover hospitalization. Many U.S. employers offer their workers a wide variety of medical insurance plans. However, because these plans vary greatly among employers, measuring them in a consistent, non-burdensome manner is very difficult. Persons who obtain self- or BEP employment or who work less than 35 hours per week would not be included in this performance indicator because individuals who work for themselves, operate a business under the management and supervision of a DSU, or work part-time are less likely to secure employer-paid medical insurance plans.

The Secretary invites comment on whether this indicator is a fair measure of a DSU's performance in assisting individuals to obtain successful employment outcomes.

- *Data for Performance Indicators 1.1 through 1.7.*

The employment outcomes covered under Performance Indicator 1.1 and in Performance Indicators 1.3 through 1.6 are reported under "employment status at closure" in the RSA-911 report. The employment outcomes covered under Performance Indicator 1.2 are reported under "type of closure" in the RSA 911. However, competitive, self-, and BEP employment outcomes, as used in Performance Indicators 1.3 through 1.6, apply only to individuals earning at least the minimum wage. An individual's earnings would be determined first by dividing the "weekly earnings at closure" RSA-911 data element by the "hours worked at closure" RSA-911 data element and then by comparing the resultant hourly earnings with the relevant Federal or State minimum wage.

"Own income as the major source of support" is currently reported in the RSA-911 report as "personal income," which is an element under "Primary source of support at application and primary source of support at closure."

The availability of medical insurance that covers hospitalization also is currently reported in the RSA-911 report. Consistent with the RSA-911 reporting instructions, a DSU would not be required to determine—(a) whether the individual has enrolled or will enroll in such a plan; (b) whether the individual has to pay for all, some, or none of the plan premiums; or (c) how

adequate the plan is for the individual's needs. A DSU need only report that such an employment-based plan exists and that the individual exiting the VR program has the option of enrolling in a medical insurance plan that covers hospitalization through his or her employer.

Equal Access to Services

- *Proposed Performance Indicator*

2.1. Proposed Performance Indicator 2.1, § 361.84(c)(2)(i), would measure whether individuals from minority backgrounds have been provided services at the same rate as non-minority individuals. However, if a DSU did not meet the performance level for Performance Indicator 2.1, it would satisfy this indicator by demonstrating that it had made adequate efforts to ensure that individuals from minority backgrounds have equal access to VR services. A DSU that did not meet the performance level for Performance Indicator 2.1 would have to demonstrate that its procedures, policies, and practices, particularly with regard to eligibility determinations and service provision, were not discriminatory. This indicator does not require DSUs to establish numerical quotas for serving individuals from minority backgrounds.

The Secretary solicits comment on this indicator and seeks examples of criteria or methods that might be used to determine whether a DSU's policies, practices, or procedures discriminate against minorities.

- *Proposed Performance Indicator*

2.2. Proposed Performance Indicator 2.2, § 361.84(c)(2)(ii), would compare minorities as a percentage of individuals with significant disabilities exiting the VR program after receiving VR services under an IPE to minorities as a percentage of individuals in the State's working age population (individuals age 16 to 64) reporting a disability that prevents them from working. This indicator would demonstrate a DSU's success in providing VR services under an IPE to individuals from minority backgrounds in proportion to the population of minorities with significant disabilities in the State. However, if a DSU does not meet the performance level of Performance Indicator 2.2, it would meet this indicator by demonstrating that it has undertaken outreach and recruitment activities to ensure that individuals from minority backgrounds have equal access to VR services. This indicator does not require DSUs to establish numerical quotas for serving individuals from minority backgrounds.

- *Data for Performance Indicators 2.1 and 2.2.* The information that is

necessary for reporting on proposed Evaluation Standard 2 would be obtained from the race and ethnicity data element of the RSA-911 report. The RSA-911 reporting categories for race and ethnicity used for Evaluation Standard 2 are compatible with U.S. Census data categories and have been approved by OMB. In addition, U.S. Census data on the number of minority working age persons in a State who report that their disability prevents them from working make it possible to identify an in-State comparison group to indicate whether minorities with disabilities are underserved in the VR program relative to their percentage in a State's general population.

However, the Secretary notes that the U.S. Bureau of the Census may eliminate from the 2000 Census Survey the current census question related to individuals possessing a disability that prevents them from working. Therefore, the Secretary invites comments identifying alternative measures that could be used to determine compliance with Performance Indicator 2.2. The Secretary also seeks suggested examples of criteria or methods that could be used to evaluate a DSU's outreach and recruitment activities related to individuals from minority backgrounds.

Section 361.86—Establishment of Performance Levels

Proposed § 361.86 would establish compliance levels for the performance indicators. Many commenters urged the Secretary to establish different performance levels for DSUs that serve only individuals who are visually impaired or who are blind. Because these DSUs serve a particular population of individuals with significant disabilities, their level of performance typically differs markedly from that of general or combined DSUs. Past performance data from these agencies support this conclusion. The Secretary, therefore, agrees that separate performance levels for DSUs that serve only individuals who are visually impaired or blind, as proposed in § 361.86(b)(1), are generally warranted. With regard to Performance Indicator 1.1 (under which a DSU has only to equal or exceed previous performance) and Performance Indicators 2.1 and 2.2 (under which a DSU has to provide equal access to minority and non-minority individuals), however, both general and combined DSUs and DSUs that serve only individuals who are visually impaired or blind would be required to meet the same performance levels.

Combined DSUs (i.e., those that serve individuals with blindness, visual

impairments, and other non-visual disabilities) suggested that separate performance levels should apply to them as well. However, analysis of existing data indicates that the presence of individuals who are blind has little impact on the overall performance of combined DSUs as compared to the overall performance of general DSUs (i.e., those that do not serve the visually impaired). Accordingly, general and combined DSUs would be subject to the same performance levels.

Some DSUs that operate under an order of selection pursuant to § 361.36(a)(1)(ii) also suggested that separate performance levels be established under Evaluation Standard 1 for those agencies. Again, analysis of existing data indicates that an order of selection has little impact on the overall performance of DSUs on the performance indicators for Evaluation Standard 1. Thus, the NPRM does not include separate performance levels for DSUs operating under an order of selection.

Proposed § 361.86(a)(2) would allow the Secretary to establish new performance levels through the regulatory process after obtaining public comment. The Secretary plans to increase performance levels over time based on experience and considers the performance levels proposed in § 361.86(b)(1) and (2) as only the first step in ensuring improved DSU performance.

Proposed performance levels for Evaluation Standard 1 are presented in § 361.86(b)(1). Each of the proposed levels for the Performance Indicators 1.1 through 1.7 identify the minimum level of performance necessary to pass a given indicator. The Secretary believes that these levels would accurately reflect whether a DSU is successfully assisting individuals with disabilities to achieve employment outcomes consistent with the Act's purposes. To achieve successful performance on Evaluation Standard 1, a DSU would have to meet or exceed the performance levels on at least two of the three primary indicators (1.3, 1.4 and 1.5) and a total of at least five of the seven performance indicators (1.1 through 1.7).

The proposed levels for each of the proposed performance indicators that will be used for determining compliance with the proposed evaluation standards were developed in recognition of the fact that DSUs typically focus their efforts on certain VR program-related areas (e.g., assisting individuals with significant disabilities; maximizing competitive employment outcomes). The proposed regulations also would require DSUs to concentrate, to some

extent, on the proposed "primary indicators" (indicators 1.3, 1.4, and 1.5), which the Secretary considers the most critical measures of a successful VR program. Consequently, the Secretary expects that DSUs will greatly exceed many of the proposed levels, particularly the levels for those indicators that reflect a DSU's priority areas. As a whole, the levels represent only the minimum level of performance that the Secretary believes is appropriate for each indicator, regardless of whether the DSU focuses most of its efforts elsewhere. In other words, although a DSU can, and to some extent is required to, focus on the purposes reflected in certain indicators (e.g., increasing competitive employment outcomes), the DSU should still be able to perform at the proposed level for the remaining indicators. The specified performance levels were developed following extensive analyses of past DSU performance in each of the areas addressed by the indicators. The Secretary believes that DSUs that fail to satisfy the proposed levels (for two of the three primary indicators or five of the seven indicators total) likely have significant systemic deficiencies and are in need of assistance to improve their program. The proposed minimum levels are designed specifically to identify those DSUs.

Proposed § 361.86(b)(2) would require each DSU to meet the performance level of .80 for both Performance Indicators 2.1 and 2.2, or, in the alternative, describe the actions it has taken and policies it has implemented to ensure that individuals with disabilities from minority backgrounds have equal access to VR services. The Secretary proposes the .80 level, as opposed to the 1.0 full parity level, to reflect the fact that minor deviations in service rates may not be related to any discriminatory policy or practice followed by the DSU. On the other hand, the Secretary believes that the proposed level represents a significant disparity in service rates for minority and non-minority individuals (or in the proportion of minority individuals with significant disabilities receiving VR services relative to their population) and that the existence of such a disparity should result in the DSU's reexamination of its policies and practices to ensure that they do not have a discriminatory effect on individuals from minority backgrounds.

Under § 361.86(b)(2)(i), a DSU would have to demonstrate that it had adopted policies and taken steps to ensure that individuals with disabilities from minority backgrounds have equal access to VR services if its performance did not meet the performance level for proposed

Performance Indicator 2.1. The Secretary proposes to provide this alternative to meeting the performance level to clarify that numerical quotas are not required. In addition, a DSU would have to make the same demonstration if the denominator of a service rate (i.e., individuals exiting the VR program) represents less than 100 cases. If fewer than 100 individuals exit the VR program, slight changes in the number of individuals receiving services would have an inordinate effect on the service rate and would not permit accurate assessment of the DSU's performance.

Under § 361.86(b)(2)(ii), a DSU would have to demonstrate that it had undertaken appropriate actions to ensure, through outreach and recruitment activities, that individuals with disabilities from minority backgrounds have equal access to VR services if the DSU did not meet the performance level for proposed Performance Indicator 2.2. This demonstration requirement also would apply if the denominator of the calculation in the performance indicator represents less than 100 cases in order to ensure that only statistically reliable calculations are used to measure performance.

Section 361.88—Reporting Requirements

Proposed § 361.88 contains DSU reporting requirements related to the proposed evaluation standards and performance indicators. Proposed § 361.88(a) would require each DSU to report, within 60 days after the end of each fiscal year, the extent to which it is in compliance with the evaluation standards and performance indicators and also report the raw performance data (contained in the RSA-911 report) specified in § 361.88(a)(1) through (13). Proposed § 361.88(a)(1) through (13) describe the performance data DSUs would be required to report.

In lieu of the report required under § 361.88(a), proposed § 361.88(b) would permit a DSU to submit its raw RSA-911 performance data on tape, diskette, or any alternative electronic format that is compatible with RSA's capability to process such an alternative. In most instances, a DSU will report raw data to RSA through the RSA-911 report, which is also due 60 days after the end of each fiscal year. RSA will make the appropriate calculations to determine DSU performance. RSA also will collect the relevant census and earnings data for those performance indicators that rely on that data to determine DSU performance. This census and earnings data will be available for review upon request.

Proposed § 361.88(c) would require that the data reported by a DSU be valid, accurate, and in a consistent format. A DSU that fails to submit data that is valid, accurate, and in a consistent format within the 60-day period would be required to develop a program improvement plan pursuant to proposed § 361.89(a).

Section 361.89—Enforcement Procedures

Proposed § 361.89 contains procedures for the enforcement of the evaluation standards and performance indicators. The proposed enforcement procedures, including reduction in or loss of funding, are consistent with section 106(b) and (c) of the Act.

Under proposed § 361.89(a), a DSU that fails to meet the performance level required on both evaluation standards would be required to develop jointly with the Secretary a program improvement plan outlining the specific actions to be taken by the DSU to improve program performance.

Proposed § 361.89(b) would require that the Secretary examine all available, relevant information in connection with the development of a program improvement plan.

Proposed § 361.89(c) would require that program improvement plans be reviewed at least biannually to determine whether the desired performance improvements have occurred or are likely to occur. If necessary, the Secretary would request that the plan be modified to improve performance. In addition, a program improvement plan would have to be modified by the DSU to address any new performance levels established by the Secretary during the time in which the plan is in effect. This requirement is intended to ensure that DSUs meet current, rather than outdated, performance levels. Reviews would continue and requests for revisions would be made until the DSU sustains satisfactory performance over a period of more than one year.

Under proposed § 361.89(d), if the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and conditions of such a program improvement plan, the Secretary, consistent with the procedures specified in § 361.11, would reduce or suspend funding to the DSU under the VR program until the DSU has met one of these two requirements or raised its subsequent performance to meet the current overall minimum satisfactory level on the compliance indicators.

Draft Proposed Standards and Indicators on Which the Secretary Seeks Public Comment

Background

In addition to inviting public comment on each of the proposed evaluation standards and performance indicators included in this NPRM, the Secretary also seeks public comment on three draft proposed evaluation standards and their concomitant draft proposed indicators. The Secretary particularly seeks comment on the validity and feasibility of implementing these draft proposed evaluation standards and draft proposed indicators. Further, the Secretary seeks assistance in identifying available instruments and methods that can be used to gather the data necessary to measure performance under these draft proposed evaluation standards and draft proposed indicators and in determining how these data-gathering instruments and methods may be developed. These draft proposed evaluation standards would measure a DSU's performance in three areas: consumer satisfaction with the VR program, retention of employment and earnings by those exiting the VR program after achieving an employment outcome, and the adequate use of VR program resources to support direct services for individuals with disabilities. The Secretary is not proposing to include these draft proposed measures as part of the proposed regulations in this NPRM. Rather, the Secretary is identifying these measures in the preamble in order to obtain public comment on their potential use and appropriateness in measuring the success of the VR program. The Secretary is in the process of developing valid data collection methods and instruments for measuring compliance with the draft proposed performance indicators and seeks input from commenters in identifying instruments that are accurate, reliable, and the least costly to DSUs. Once necessary instruments have been developed, and subsequent tests confirm their reliability, the Secretary will address these evaluation standards and performance indicators in a future rulemaking. The draft proposed evaluation standards and performance indicators are stated and discussed below.

- *Draft Proposed Evaluation Standard 3 (Consumer Satisfaction):* A DSU shall ensure a high level of consumer satisfaction.

Draft proposed Evaluation Standard 3 is based on several provisions of the Act, including sections 101(a)(21)(A)(ii)(III) and 105(c)(4) of the

Act, which require the use of consumer satisfaction surveys as a way of assessing DSU effectiveness. In addition, many individuals in the disability community have commented on the need for an evaluation standard and related performance indicators that measure consumer satisfaction, particularly satisfaction with the level of informed choice afforded consumers during the VR process.

- *Draft Proposed Evaluation Standard 4 (Retention of Employment and Earnings):* A DSU shall assist individuals to achieve competitive, self, or BEP employment outcomes that enable them to maintain their employment and earnings over time.

The Secretary believes that a successful employment outcome is one in which the individual maintains employment and earnings for at least six months after exiting the program. As discussed previously, this standard is consistent with Core Indicators II (retention in unsubsidized employment six months after entry into employment) and III (earnings received in unsubsidized employment six months after entry into the employment) under section 136(b) of the Workforce Act. This standard is also consistent with the reporting requirements in section 101(a)(10)(C) (iii) and (iv) of the Act (employment and earnings of individuals 6 months and 12 months after ending participation in the VR program) and in section 136(d)(2)(D) of the Workforce Act (retention of employment and earnings received in unsubsidized employment 12 months after entry into employment). Thus, under draft proposed Evaluation Standard 4, retention of employment and earnings for individuals who achieved an employment outcome with assistance from a DSU would be evaluated following periods of 6 and 12 months. The Secretary is particularly interested in receiving suggestions on how accurate and reliable data could be collected in a consistent format to measure a DSU's performance on this draft proposed evaluation standard.

- *Draft Proposed Evaluation Standard 5 (Adequate Use of Resources):* A DSU shall focus its Federal VR and State matching funds on direct services for individuals with disabilities.

Draft proposed Evaluation Standard 5 would measure the extent to which a DSU uses its Federal VR and State matching funds to pay for direct services (i.e., VR services authorized under § 361.48(a) and § 361.49(a), except for the construction of facilities) for individuals with disabilities. Section 100(b)(1) of the Act authorizes

appropriations for the purpose of making grants "to assist States in meeting the costs of vocational rehabilitation services." The Secretary maintains that the success of the VR program is based on the DSU's ability to provide VR services that enable individuals with disabilities to work. For that reason, draft proposed Evaluation Standard 5 would measure DSU effectiveness in focusing its resources on the direct service needs of individuals with disabilities.

Draft Proposed Performance Indicators

The Secretary plans to propose three performance indicators for draft proposed Evaluation Standard 3, two performance indicators for draft proposed Evaluation Standard 4, and one performance indicator for draft proposed Evaluation Standard 5. Again, data collection methods and instruments have yet to be developed and tested for these performance indicators. Thus, the Secretary is not proposing to establish performance levels for, nor measure compliance with, these draft proposed performance indicators at this time.

Consumer Satisfaction

- *Draft Proposed Performance Indicator 3.1:* Of all individuals receiving VR services, the percentage who are satisfied with their own level of participation in decision-making throughout the development and implementation of their IPE.

Draft proposed Performance Indicator 3.1 would address the extent to which a DSU implements the statutory policy of facilitating informed choice. That policy is reflected, for example, in section 100(a)(3)(C) of the Act, which states that eligible individuals and applicants "must be active and full partners in the vocational rehabilitation process, making meaningful and informed choices during assessments * * * and in the selection of employment outcomes * * *, services needed to achieve the outcomes, entities providing such services, and the methods used to secure such services."

- *Draft Proposed Performance Indicator 3.2:* Of all individuals receiving services, the percentage who are satisfied with—

- (1) The appropriateness, timeliness, quality, and extent of the services they received;

- (2) Their interactions with providers of those services; and

- (3) Their interactions with VR counselors and other DSU staff.

Draft proposed Performance Indicator 3.2 is based on statutory requirements that call for consumer satisfaction

surveys to be used as measures of DSU effectiveness (e.g., section 105(c)(4) of the Act requiring that State Rehabilitation Councils survey the satisfaction of individuals receiving VR services). Also, section 136(b)(2)(B) of the Workforce Act requires an indicator of "customer satisfaction of * * * participants with services received" to be developed for each State.

- *Draft Proposed Performance Indicator 3.3:* Of all individuals who obtain employment, the percentage who are satisfied with their employment.

Draft proposed Performance Indicator 3.3 is based upon the regulatory requirements in § 361.56 that govern whether an individual is considered to "have achieved an employment outcome." In particular, § 361.56(e) of the regulations requires that "the individual and the rehabilitation counselor or coordinator consider the employment outcome to be satisfactory" as a condition of determining that the individual has achieved an employment outcome. The Secretary seeks public comment on how this type of consumer satisfaction data could be collected reliably and accurately in a manner that is the least burdensome and costly to DSUs and invites commenters to submit examples of existing State consumer satisfaction surveys and collection methods.

Retention of Employment and Earnings

- *Draft Proposed Performance Indicator 4.1:* Of all individuals who have achieved a competitive, self-, or BEP employment outcome with earnings equivalent to at least the minimum wage, the percentage who have maintained competitive employment, including earnings equivalent to at least the minimum wage, 6 months and 12 months after exiting the VR program.

Retention of employment is an essential issue for both the individual and the VR program that corresponds directly to the employment-related purposes of the VR program. Draft proposed Performance Indicator 4.1 would measure retention 6 months and 12 months after exit from the VR program, which the Secretary views as an appropriate indicator of whether the individual is likely to maintain employment over time.

- *Draft Proposed Performance Indicator 4.2:* Individuals with significant disabilities who have maintained competitive employment, including earnings equivalent to at least the minimum wage, 6 months and 12 months after exiting the VR program as a percentage of all individuals with significant disabilities who achieved a

competitive, self-, or BEP employment outcome with earnings equivalent to at least the minimum wage.

Draft proposed Performance Indicator 4.2 was developed in recognition of the greater barriers to long-term employment retention faced by individuals with significant disabilities.

Adequate Use of Resources

- *Draft Proposed Performance Indicator 5.1:* Of the total amount of all Federal VR and State matching funds spent in support of activities described in the State Plan under section 101 of the Act, the percentage of Federal VR and State matching funds spent on direct services to consumers, including services provided directly by the staff of a DSU.

Draft proposed Performance Indicator 5.1 would address a DSU's success in operating an effective and efficient VR program. The indicator would compare the level of Federal VR and State matching funds that a DSU spends directly on services to individuals with disabilities as a percentage of all Federal VR and State matching funds that it expends for other purposes (e.g., administrative costs). RSA is currently examining reliable methods for identifying direct services costs that do not impose excessive reporting burdens on DSUs.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goal that by the year 2000, every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. These proposed regulations would further the objectives of this Goal because the development and implementation of evaluation standards and performance indicators will enhance the accountability and effectiveness of The State Vocational Rehabilitation Services Program, which assists States in operating a comprehensive, coordinated, effective, efficient, and accountable program for vocational rehabilitation designed to assess, plan, develop, and provide

vocational rehabilitation services for individuals with disabilities so that they may prepare for and engage in gainful employment.

Executive Order 12866

1. Potential Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

The potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following headings: "Supplementary Information" and "Paperwork Reduction Act of 1995."

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings,

paragraphing, etc.) aid or reduce their clarity? Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 361.81 Applicable definitions.) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (Room 5121, FB-10B), Washington, D.C. 20202-2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

Sections 361.82, 361.84, 361.88, and 361.89 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to OMB for its review.

Collection of Information: The State Vocational Rehabilitation Services Program

States are eligible to apply for grants under these proposed regulations. The information to be collected includes data reported to assess compliance with established evaluation standards and performance indicators for the VR program. The Department needs and uses the information to comply with the provisions of section 106 of the Act that mandates the establishment of evaluation standards and performance indicators for the program.

All information is to be collected and reported annually. Annual reporting and recordkeeping burden for this collection of information is estimated to average one hour for each response for

one respondent, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be one hour.

Note: The burden is estimated as one hour because the remaining burden hours are accounted for under a separate OMB control number 1820-0508, which is called the RSA 911 Case Service Report.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes

developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Electronic Access to This Document

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219-1511 or, toll free, 1-800-222-4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 361

Reporting and recordkeeping requirements, State-administered grant program—education, Vocational rehabilitation.

Dated: June 2, 1998.

Richard W. Riley,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.126—The State Vocational Rehabilitation Services Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Subpart E to Part 361 to read as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

* * * * *

Subpart E—Evaluation Standards and Performance Indicators

Sec.

- 361.80 Purpose.
- 361.81 Applicable definitions.
- 361.82 Evaluation standards.
- 361.84 Performance indicators.
- 361.86 Performance levels.
- 361.88 Reporting requirements.
- 361.89 Enforcement procedures.

Authority: 29 U.S.C. 711(c), unless otherwise noted.

* * * * *

Subpart E—Evaluation Standards and Performance Indicators

§ 361.80 Purpose.

The purpose of this subpart is to establish evaluation standards and performance indicators for The State Vocational Rehabilitation (VR) Services Program.

(Authority: 29 U.S.C. 726(a))

§ 361.81 Applicable definitions.

In addition to those definitions in § 361.5(b), the following definitions apply to this subpart:

Average hourly earnings means the average per hour earnings in the week prior to exiting the VR program of an eligible individual who has achieved a competitive employment outcome.

Business Enterprise Program (BEP) means an employment outcome in which an individual with a significant disability operates a vending facility or other small business under the management and supervision of a designated State unit (DSU). This term includes home industry, farming, and other enterprises.

Exit the VR program means that a DSU has closed the individual's record of VR services in one of the following categories:

- (1) Ineligible for VR services.
- (2) Received services under an individualized plan for employment (IPE) and achieved an employment outcome.
- (3) Received services under an IPE but did not achieve an employment outcome.
- (4) Eligible for VR services but did not receive services under an IPE.

Full-time employment means an employment outcome in which an eligible individual worked for pay for a minimum of 35 hours in the week before closure.

General or combined DSU means a DSU that does not serve exclusively individuals with visual impairments or blindness.

Individuals from a minority background means individuals who report their race or ethnicity as Black,

American Indian, Alaskan Native, Asian, Pacific Islander, or of Hispanic origin.

Minimum wage means the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) (i.e., the Federal minimum wage) or applicable State minimum wage law.

Non-minority individuals means individuals having ethnicity or race reported as White.

Performance period is the reporting period during which a DSU's performance is measured. For Evaluation Standards 1 and 2, performance data must be aggregated and reported for each fiscal year commencing with fiscal year 1999. However, DSUs that exclusively serve individuals with visual impairments or blindness shall report each year aggregated data for the two previous years for Performance Indicators 1.1 through 1.7; the second year must coincide with the performance period for general or combined DSUs.

Primary indicators means Performance Indicators 1.3, 1.4, and 1.5, which are specifically designed to measure—

(1) The achievement of competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher, particularly by individuals with significant disabilities; and

(2) The ratio between the average hourly earnings of individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher and the State's average hourly earnings for all employed individuals.

RSA-911 means the Case Service Report that is submitted annually by a DSU as approved by the Office of Management and Budget (OMB).

Self-employment means an employment outcome in which the individual works for profit or fee in his or her own business, farm, shop, or office, including sharecroppers.

Service rate means the result obtained by dividing the number of individuals who exit the VR program after receiving one or more services under an IPE during any reporting period by the total number of individuals who exit the VR program (as defined in this section) during that reporting period, including individuals who were determined ineligible for services.

State's average hourly earnings means the average hourly earnings of all persons in the State in which the DSU is located.

(Authority: 29 U.S.C. 726(a))

§ 361.82 Evaluation standards.

(a) The Secretary establishes two evaluation standards to evaluate the performance of each DSU that receives funds under this part. The evaluation standards assist the Secretary and each DSU to evaluate a DSU's performance in serving individuals with disabilities under the State VR Services Program.

(b) A DSU shall achieve successful performance on both evaluation standards during each performance period.

(c) The evaluation standards for The State VR Services Program are—

(1) *Evaluation Standard 1—Employment outcomes.* A DSU shall assist any eligible individual, including an individual with a significant disability, to obtain, maintain, or regain high-quality employment.

(2) *Evaluation Standard 2—Equal access to services.* A DSU shall ensure that individuals from minority backgrounds have equal access to VR services.

(Authority: 29 U.S.C. 726(a))

§ 361.84 Performance indicators.

(a) The performance indicators establish what constitutes minimum compliance with the evaluation standards.

(b) The performance indicators require a DSU to provide information on a variety of factors to enable the Secretary to measure compliance with the evaluation standards.

(c) The performance indicators are as follows:

(1) *Employment outcomes.*

(i) *Performance Indicator 1.1.* The number of individuals exiting the VR program who achieved an employment outcome during the current performance period compared to the number of individuals who exit the VR program after achieving an employment outcome during the previous performance period.

(ii) *Performance Indicator 1.2.* Of all individuals who exit the VR program after receiving services, the percentage who are determined to have achieved an employment outcome.

(iii) *Performance Indicator 1.3.* Of all individuals determined to have achieved an employment outcome, the percentage who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage.

(iv) *Performance Indicator 1.4.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the percentage who are individuals with significant disabilities.

(v) *Performance Indicator 1.5.* The average hourly earnings of all

individuals who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed (as derived from the Bureau of Labor Statistics report "State Average Annual Pay" for the most recent available year).

(vi) *Performance Indicator 1.6.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the difference between the percentage who reported their own income as the largest single source of economic support at exit and the percentage who reported their own income as the largest single source of support at application.

(vii) *Performance Indicator 1.7.* Of all individuals exiting the VR program in full-time competitive employment, the percentage exiting the VR program in full-time competitive employment who can enroll in a medical insurance plan that covers hospitalization and is made available through the individual's place of employment.

(2) *Equal access to services.*

(i) *Performance Indicator 2.1.* The service rate for all individuals with disabilities from minority backgrounds as a ratio to the service rate for all non-minority individuals with disabilities.

(ii) *Performance Indicator 2.2.* The percentage of individuals with significant disabilities who exit the VR program after receiving services under an IPE who are minorities as a ratio to the percentage of individuals in the State's working age population (individuals age 16 to 64) reporting a disability that prevents them from working (as reported in U.S. Bureau of Census, Public Use Microdata System (PUMS), 1990 Decennial Census) who are minorities.

(Authority: 29 U.S.C. 726(a))

§ 361.86 Performance levels.

(a) *General.* (1) Paragraph (b) of this section establishes performance levels for—

(i) General or combined DSUs; and
(ii) DSUs serving exclusively individuals who are visually impaired or blind.

(2) The Secretary may establish, by regulations, new performance levels.

(b) *Performance levels for each performance indicator.* (1) To achieve successful performance on Evaluation Standard 1 (Employment outcomes), a DSU must meet or exceed the performance levels established for five of the seven performance indicators in the evaluation standard, including

meeting or exceeding the performance levels for two of the three primary

indicators (Performance Indicators 1.3, 1.4 and 1.5). The performance levels for

Performance Indicators 1.1 through 1.7 are—

Performance indicator	Performance level by type of DSU	
	General/combined	Blind
1.1	Equal or exceed previous performance period.	
1.2	55.8%	68.9%
1.3	72.6%	35.4%
1.4	62.4%	89.0%
1.552 (Ratio)59
1.6	53.0 (math. difference)	30.4
1.7	50.6%	49.3%

(2) To achieve successful performance on Evaluation Standard 2 (Equal access), DSUs must meet or exceed the performance level established for Performance Indicator 2.1 or meet the performance requirement in paragraph (b)(2)(i) of this section. DSUs must also meet or exceed the performance level established for Performance Indicator 2.2 or meet the performance requirement in paragraph (b)(2)(ii) of this section. The performance levels for Performance Indicators 2.1 and 2.2 are—

Performance indicator	Performance levels
2.1 (Ratio)80
2.2 (Ratio)80

(i) If a DSU's performance does not meet or exceed the performance level required for Performance Indicator 2.1, or if a DSU has less than 100 cases in the denominator of a service rate, the DSU shall describe the policies it has adopted and the steps it has taken to ensure that individuals with disabilities from minority backgrounds have equal access to VR services.

(ii) If a DSU's performance does not meet or exceed the performance level required for Performance Indicator 2.2, or if a DSU has less than 100 cases in the denominator of the calculation, a DSU shall describe the outreach and recruitment activities it has undertaken and the policies and other practices it has adopted to ensure that individuals with disabilities from minority backgrounds have equal access to VR services.

(Authority: 29 U.S.C. 726(a))

§ 361.88 Reporting requirements.

(a) The Secretary requires that each DSU report within 60 days after the end of each fiscal year the extent to which the State is in compliance with the evaluation standards and performance indicators and include in this report the following RSA-911 data:

(1) The number of individuals who exited the VR program in each closure category as specified in the definition of "Exit the VR program" under § 361.81.

(2) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(3) The number of individuals with significant disabilities who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(4) The weekly earnings and hours worked of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(5) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at application was "personal income."

(6) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at closure was "personal income."

(7) The number of individuals exiting the VR program in full-time competitive employment.

(8) The number of individuals exiting the VR program in full-time competitive employment who have health insurance that covers hospitalization available through their job.

(9) The total number of individuals exiting the VR program who are individuals from a minority background.

(10) The total number of non-minority individuals exiting the VR program.

(11) The total number of individuals from a minority background exiting the VR program after receiving services under an IPE.

(12) The total number of non-minority individuals exiting the VR program after receiving services under an IPE.

(13) The number of individuals from a minority background who are individuals with significant disabilities

and exit the VR program after receiving services under an IPE.

(b) In lieu of the report required in paragraph (a) of this section, a DSU may submit its RSA-911 data on tape, diskette, or any alternative electronic format that is compatible with RSA's capability to process such an alternative, as long as the tape, diskette, or alternative electronic format includes the data that—

(1) Are required by paragraph (a)(1) through (13) of this section; and

(2) Meet the requirements of paragraph (c) of this section.

(c) Data reported by a DSU must be valid, accurate, and in a consistent format. A DSU's failure to submit data that are valid, accurate, and in a consistent format within the 60-day period will require the DSU to develop a program improvement plan pursuant to § 361.89(a).

(Authority: 29 U.S.C. 726(b))

§ 361.89 Enforcement procedures.

(a) If a DSU fails to meet the established performance levels on both evaluation standards as required by § 361.82(b), the Secretary and the DSU jointly develop a program improvement plan that outlines the specific actions to be taken by the DSU to improve program performance.

(b) In developing the program improvement plan, the Secretary considers all available and relevant data and information related to the DSU's performance.

(c) When a program improvement plan is in effect, review of the plan is conducted on a biannual basis. If necessary, the Secretary requests that a DSU make further revisions to the plan to improve performance. If the Secretary establishes new performance levels under § 361.86(a)(2), the Secretary and the DSU jointly shall modify the program improvement plan based on the new performance levels. The Secretary continues reviews and requests revisions until the DSU sustains satisfactory performance based on the

current performance levels over a period of more than one year.

(d) If the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and

conditions of the program improvement plan, the Secretary, consistent with the procedures specified in § 361.11, reduces or makes no further payments to the DSU under this program until the DSU has met one of these two requirements or raised its subsequent

performance to meet the current overall minimum satisfactory level on the compliance indicators.

(Authority: 29 U.S.C. 726(b) and 726(c))

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